



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the tenant for a monetary order for money owed or compensation for loss or damage under the Act, for the return of double her security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with s. 89 of the Act. They were sent to the landlord by registered mail on September 24, 2009. I find that the landlord was properly served pursuant to s. 89 of the Act with notice of this hearing and the hearing proceeded in the landlords' absence.

Having heard the evidence of the parties, under oath, and having given the parties the opportunity to give their evidence orally and to provide written and documentary evidence and to make submissions to me, I have determined:

Issues(s) to be Decided

- Is the tenant entitled to compensation for damage or loss under the Act and if so how much?
- Is the tenant entitled to receive double the security deposit back?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on June 01, 2009 and ended on September 07, 2009 when the tenant vacated the rental property. Rent for this property was \$1,000.00 per month and was due on the



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1st of each month. The tenant paid a security deposit of \$500.00 on May 30, 2009. The tenant gave the landlord her forwarding address in writing on September 15, 2009.

The tenant testifies that she was given a Two Month Notice to End Tenancy on July 22, 2009 to end the tenancy on September 30, 2009. The reasons stated on the Notice were that the rental unit will be occupied by the landlord or the landlords spouse or a close family member of the landlord or the landlords' spouse. The tenant claims that the landlord sold the property. The tenant seeks double her monthly rent in compensation as the landlord did not use the property for the intended purpose as stated on the Two Months Notice.

The tenant gave the landlord her forwarding address and posted this along with her 10 day notice to end the tenancy on September 01, 2009. The landlord had 15 days from the date of receiving the tenants forwarding address in writing to return the tenants security deposit. The landlord did not return the tenants' security deposit until November 16, 2009 when he sent the tenant a cheque for \$1,000.00 which included her deposit and half a months' rent in compensation.

The tenant seeks \$1,000.00 compensation for the Two Months Notice issued to her by the landlord.

The landlord agrees that he did serve the tenant with the Two Months Notice and at the time he was planning to move his daughter into the rental unit to help speed up the sale of the property. However, the property sold and the new owners took possession on October 01, 2009. The landlord agrees that he did send the tenant a cheque for \$1,000.00 as he believed this was her security deposit plus the half months rent compensation she was entitled to for September, 2009.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the landlord gave the tenant a Notice to End Tenancy for landlords' use of the

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property on July 22, 2009 and therefore pursuant to s. 51 of the *Act*, the landlord is required to pay compensation equivalent to one months' rent, to the tenant. Under s. 50 of the *Act*, if a landlord gives the tenant notice to end a tenancy under s. 49 of the *Act* the tenant may end the tenancy early by giving the landlord at least 10 days written notice. However, a notice under this section does not affect the tenants' right to compensation under section 51.

I find the tenant did give the landlord notice to end the tenancy and this was received by the landlord on September 05, 2009. Therefore, the tenancy would end on September 15, 2009 due to the tenants 10 Day Notice. I find therefore, that the tenant was entitled to the equivalent of one month's free rent for September. As the tenant did not pay rent for September and was deemed to have ended her tenancy on September 15, 2009. The tenant is still entitled to recover from the landlord the remainder of the compensation for Septembers rent to amount of \$500.00. I find the landlord did return this amount to the tenant by cheque on November 16, 2009.

I note that s. 51 of the *Act* states that if a landlord does not take steps to accomplish the stated purpose for ending the tenancy under s. 49 of the *Act* within a reasonable period after the effective date of the notice or the rental unit is not used for that stated purpose for at least 6 months the landlord must pay the tenant an amount that is equivalent to double the monthly rent payable under the tenancy agreement. I find that the landlord did not use the property for its stated purpose on the Notice to End Tenancy and therefore, pursuant to s. 51 of the *Act* the tenant is entitled to compensation to an amount that is equivalent to double the monthly rent payable under the tenancy agreement to an amount of **\$2,000.00**.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to s. 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.



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I find that the landlord did receive the tenants forwarding address in writing by September 05, 2009. As a result, the landlord had until September 20, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security deposit until November 16, 2009. Consequently, pursuant to s. 38(6)(b) of the *Act*, the landlord must pay the tenant double the amount of her security deposit to an amount of **\$1,000.00**.

The landlord has sent the tenant a cheque for \$1,000.00 on November 16, 2009 and this amount will be deducted from the amount owed to the tenant by the landlord. As the tenant has been successful in this matter, she is also entitled to recover her **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

If damage or loss results from a party not complying with the *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party pursuant to s. 67 of the *Act*. As such I find the tenant is entitled to a Monetary Order for the following amount:

Compensation for September 16 to 30, 2009:	\$500.00
Compensation for two months rent:	\$2,000.00
Double the security deposit:	\$1,000.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$3,550.00
Less the amount already returned to the tenant (for Septembers compensation and the security deposit)	(-\$1,000.00)
Total amount due to the tenant:	\$2,550.00



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Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,550.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 07, 2010.

Dispute Resolution Officer